

JK 516

.B7

Copy 1

JK 516

.B7

Copy 1

THE
INTERNATIONAL
LAW AND ORDER LEAGUE.

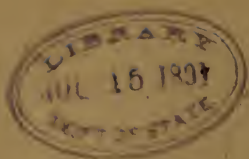
"THE EXECUTIVE POWER AND THE ENFORCE-
MENT OF THE LAWS."

ADDRESS OF

PRESIDENT CHARLES CARROLL BONNEY,
"

AT

PITTSBURGH, PENNSYLVANIA, NOV. 21, 1890.



JK 516
137

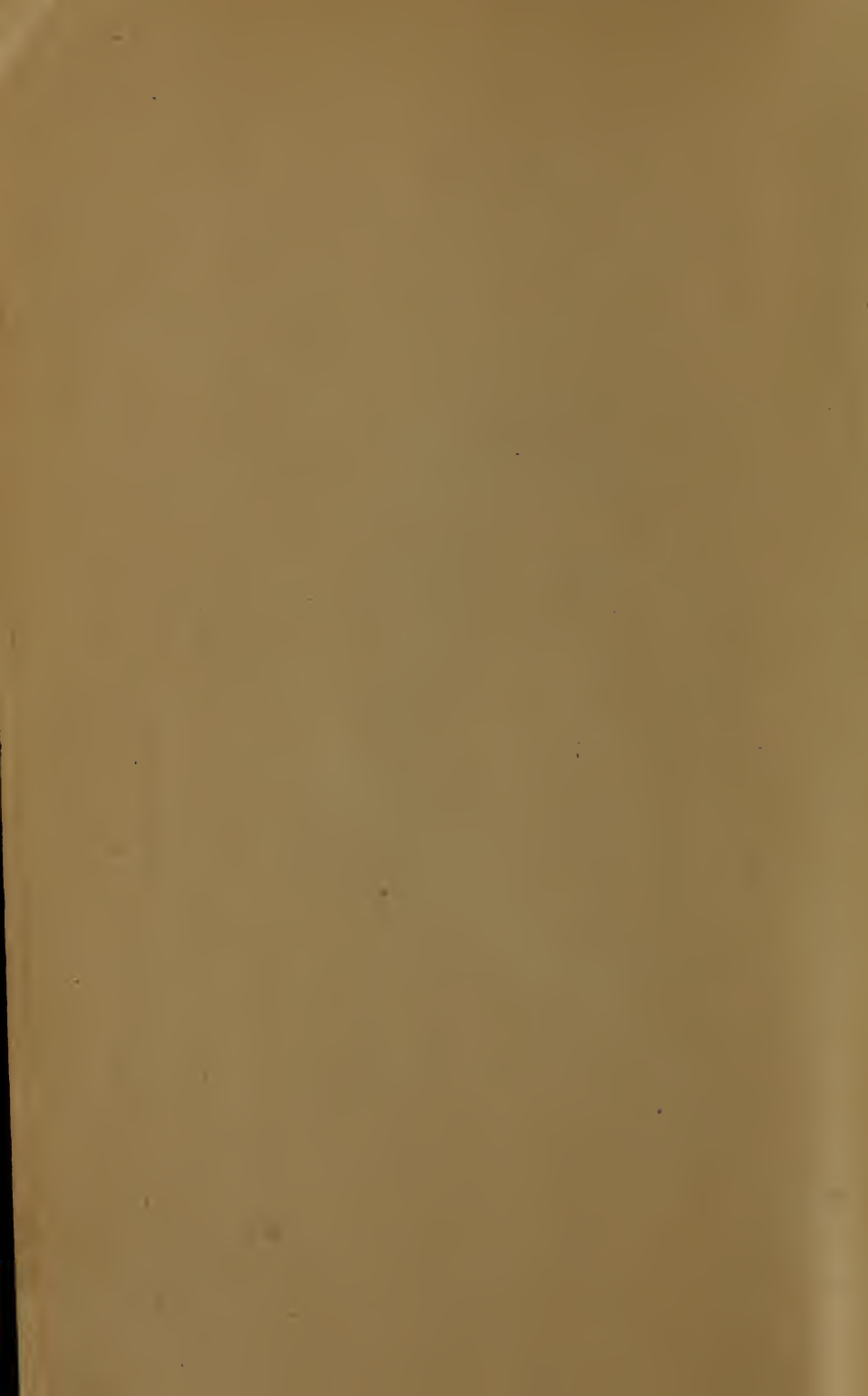


EL 27/3/09

THE EXECUTIVE POWER.

CONTENTS.

I.	Introductory,	-	-	-	1
II.	Executive Power in the Mother Country,				5
III.	Executive Power of the American Union,				6
IV.	Executive Power of the American States,				7
V.	Executive Power of Cities,	-	-	-	8
VI.	Executive Power of Countries,	-	-	-	10
VII.	Nature of the Executive Power,				12
VIII.	Application of the Principles Considered,				14



THE

EXECUTIVE POWER

AND THE

ENFORCEMENT OF THE LAWS.

Friends of Law and Order:

The foundation principle of constitutional government is the truth that there are certain transcendent rules that even rulers should obey; certain supreme laws to which even the highest official dignitaries owe a paramount allegiance; and without the sanction of which they would not be entitled to hold and exercise the powers of their positions.

This is true alike in monarchy and in republic, for no man can be King or President, except in conformity to some fundamental law, which is the source and measure of his right. There may, indeed, be a usurper of power, ruling by force, in defiance of law, but not a lawful ruler without the condition stated.

Government consists, essentially, in making and enforcing rules of public or private conduct, and in expounding and applying those rules in cases of controversy. Hence, government is naturally divided into the three great departments of legislative, executive and judicial power.

In the gradual evolution and development of civil government,

it has been found that the duties of those departments differ so materially in their nature and circumstances, as to require different qualifications for proper fulfillment; and that satisfactory results can be obtained only by providing separate and relatively independent officers for each department, with suitable connecting links between them.

To allow a person, or several persons who have made a rule for future conduct, to determine, after it shall have become a subject of controversy, its construction, scope and force, and apply it accordingly; or to permit an executive officer, conclusively to decide for himself upon the validity, propriety and effect of such a law, and regulate its enforcement accordingly, would be to permit arbitrary and despotic power to assert its sway, no matter what may be the form of the government. If the Legislature enact a law, or an executive officer issue an order, or perform an official act, obviously the validity of the law, order or act should be referred in any proper case, to a disinterested and impartial tribunal for proper examination and decision.

In America the constitution of government has assumed the most definite form; and the great departments of power the highest relative importance and independence. Here the great trinity of government is most conspicuously revealed. Legislature, executive and judiciary stand forth, each with its distinct identity and characteristics, yet are all united in the grand body politic of the government, and work harmoniously together like the vital organs of the human body.

If we observe, attentively, the course of the various governmental operations, we shall soon discover that while all the work is imperfect, as everything human must be, the best is done by the judiciary, the most defective by the legislative, and the most inefficient and inadequate by the executive department of power, alike in nation, province, state and municipality.

It is true that in the proceedings of the courts there is still undue delay, uncertainty and expense which should be remedied, but in most cases substantial justice seems, finally, to be fairly well attained, and the obligation to secure it is universally acknowledged, while higher rules of personal and official conduct are declared and enforced than those which prevail in any other department of the government. Violations of duty are every-

where earnestly condemned, and, as a general rule, severely punished.

Legislative work is notoriously poor. In quantity it is excessive, burdening the statute books with worse than needless details of mere administration; in quality it is crude and uncertain, requiring years of litigation to determine its real meaning and effect; in motive too often partial and sectional, instigated by some merely local interest or grievance, and not properly limited to kindred cases.

But it is in the executive department of power that the greatest surprises await us. We see, as we survey the country, executive positions high as the thrones of kings, and richly endowed with regal powers, occupied by commanders-in-chief who do not command; governors who do not govern; executives who do not execute. We see those exalted public officers largely occupied with the affairs of the political party to which they respectively belong; and, when not so engaged, appearing more like the chairmen of important committees, than as the custodians and administrators of great powers of government.

It has taken a century to evolve and develop the meaning and scope of the national power to "regulate commerce among the several states," and after the lapse of that century there seems to be no adequate comprehension, in the general public mind, of the real nature, extent and office of the executive power, as vested under the American system of free government.

The consequences of the almost universal neglect to understand and exercise the executive power of cities, states and nation, have been and are most deplorable. Dangerous classes and interests boldly intrude into the fields of active life, and audaciously contend with legitimate business and with lawful authority for possession and control. Innocence and justice walk in dread of contact with disorder and vice, even in the highways of the people. The law-abiding do not feel that the strong hand of power is always ready to uphold and protect them, and repel assault. The "peace and good order of society" seem to be preserved almost as much by the forbearance of wrong, as by the power of right.

False ideas of government infest the public mind, and it seems to be a common notion that any person may, at pleasure, dispute any public authority, and that the only recourse, in such a case, is a law suit, more or less protracted, in which the wrong

doer will have a chance of success, through some technical defect, either in the circumstances of the case or the details of the proceeding.

Let us, therefore, briefly consider the Nature and Duties of the Executive Power, with the purpose of promoting, as far as may be practicable, its larger and more efficient exercise for the protection of the people, and the institutions which characterize our civilization.

For the purposes of this inquiry we do not need to examine all the constitutions and laws that affect the various localities to which the Law and Order movement extends; but it will be sufficient to take convenient examples to illustrate the principles involved, and the mode of their application. American institutions are so largely an inheritance, that we naturally turn, at the outset, to the ancestral land for information of their origin and fundamental character.

The essential principles of executive administration are substantially the same in all enlightened countries, however the details of their organization and application may vary in different localities.

The Executive is defined by the great American lexicographer, Noah Webster, as "the officer, whether king, president, or other chief magistrate, who superintends the execution of the laws; the person or persons who administer the government; the executive power or authority in government." For the proper understanding and interpretation of this power, recourse must be had to the jurisprudence of its origin; for it is an established rule that terms introduced into a law must be understood in the sense which they bore when first so used; and that when imported from another jurisdiction they bring with them the construction which they there received, although it may be enlarged from time to time, according to a maxim of the common law, to embrace new cases within the principle involved, as they arise in the progress of human affairs.

We must therefore turn, in the present case, to the law of Great Britain for light on the origin, nature and scope of the Executive Power. What it was in that country when our government was established, it continues to be here, except as changed by our constitutions and laws to adapt it to the different conditions and circumstances of our people.

II. THE EXECUTIVE POWER IN THE MOTHER COUNTRY.

In his luminous and authoritative "Commentaries on the Laws of England," the first publication of which was completed in 1769, Sir William Blackstone, the most distinguished expounder of the English system of law and government, speaks as follows of the power under consideration.

The Supreme Executive Power is vested in a single person, the king or queen.

This executive power of the English nation is so vested by the general consent of the people, for the care and protection of the community, in subservience to the law of the land, in return for which the allegiance of every individual is due. Bl. Com. Bk. I. Ch. III, pp. 189, 190.

It is a maxim in the law that protection and subjection are reciprocal. * * * The principal duty of the king is, to govern the people according to law. * * * The king ought not to be subject to man, but to God and the law, for THE LAW maketh the king. Let the king therefore render to the law, what the law hath invested in him, with regard to others, dominion and power, for he is not truly king, where will and pleasure rules, and not the law. * * * The Laws of England are the birth-right of the people thereof, and all the kings and queens who shall ascend the throne of this realm, ought to administer the government of the same, according to said laws.

The coronation oath binds the sovereign so to govern, and to the extent of his power to cause law and justice, in mercy to be executed. Ibid., Ch. VI, pp. 233, 236.

The limitation of the regal authority was a first and essential principle in all the Gothic systems of government established in Europe.

In this connection, Judge Blackstone speaks in eloquent terms of "those inherent though latent powers of society, which no climate, no time, no constitution, no contract can ever destroy or diminish," thus anticipating the majestic proclamation of the inalienable rights of man, made a few years later, in the declaration of American independence. Ibid., Ch. VII, pp. 238, 245.

Civil liberty, rightly understood, consists in protecting the rights of individuals by the united force of society. Ibid., 251.

The king is considered as the generalissimo, or the first in military command, within the kingdom. The great end of society is to protect the weakness of individuals, by the united strength of the community; and the principal use of government is to direct that united strength in the best and most effectual manner to answer the end proposed. *Ibd.*, 262.

The king is also the general conservator of the peace of the kingdom. *Ibd.*, 266.

The Proclamations of the king have a binding force, when they are grounded upon and enforce the laws of the realm.

* * * Such proclamations must not contradict the old laws, nor tend to establish new ones, but only to enforce the execution of such laws as are already in being, in such manner as the king shall judge necessary. *Ibd.*, 270.

The sheriff is an officer of very great antiquity * * * and does all the king's business in the country.

* * * He acts in a four-fold capacity, namely, as a judge in certain primary matters; as the keeper of the king's peace; in a ministerial capacity, as an officer of the courts of justice; and as the king's bailiff, in matters of property and revenue. *Ibd.*, IX, 343, 344.

Of the powers and duties of this officer, more will be said, under the title of his office, in a subsequent part of this discourse.

Let us now turn to the new world, and note how the regal principle of government has been established here. For in some form it is essential to every effective organization of human society.

III. THE EXECUTIVE POWER OF THE UNITED STATES.

The Constitution of the American Union declares that "the EXECUTIVE POWER shall be vested in a President of the United States of America." He is required to take an oath or affirmation that he will faithfully execute his office; and will, to the best of his ability, preserve, protect and defend the constitution. He is made commander-in-chief of the army and navy, and of the militia of the several states, when called into the service of the United States. The power to grant reprieves and pardons is also vested in him; and with the consent of the Senate it is his right

and duty to make treaties, and to appoint ambassadors, other public ministers, consuls, judges of the Supreme Court, and other public officers.

The constitution also commands that he shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; and that "HE SHALL TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED."

He may be impeached for treason, bribery, or other high crimes and misdemeanors, and, on conviction shall be removed from office. Con. U. S. Art. 2. Sec. 1, 2, 3, 4.

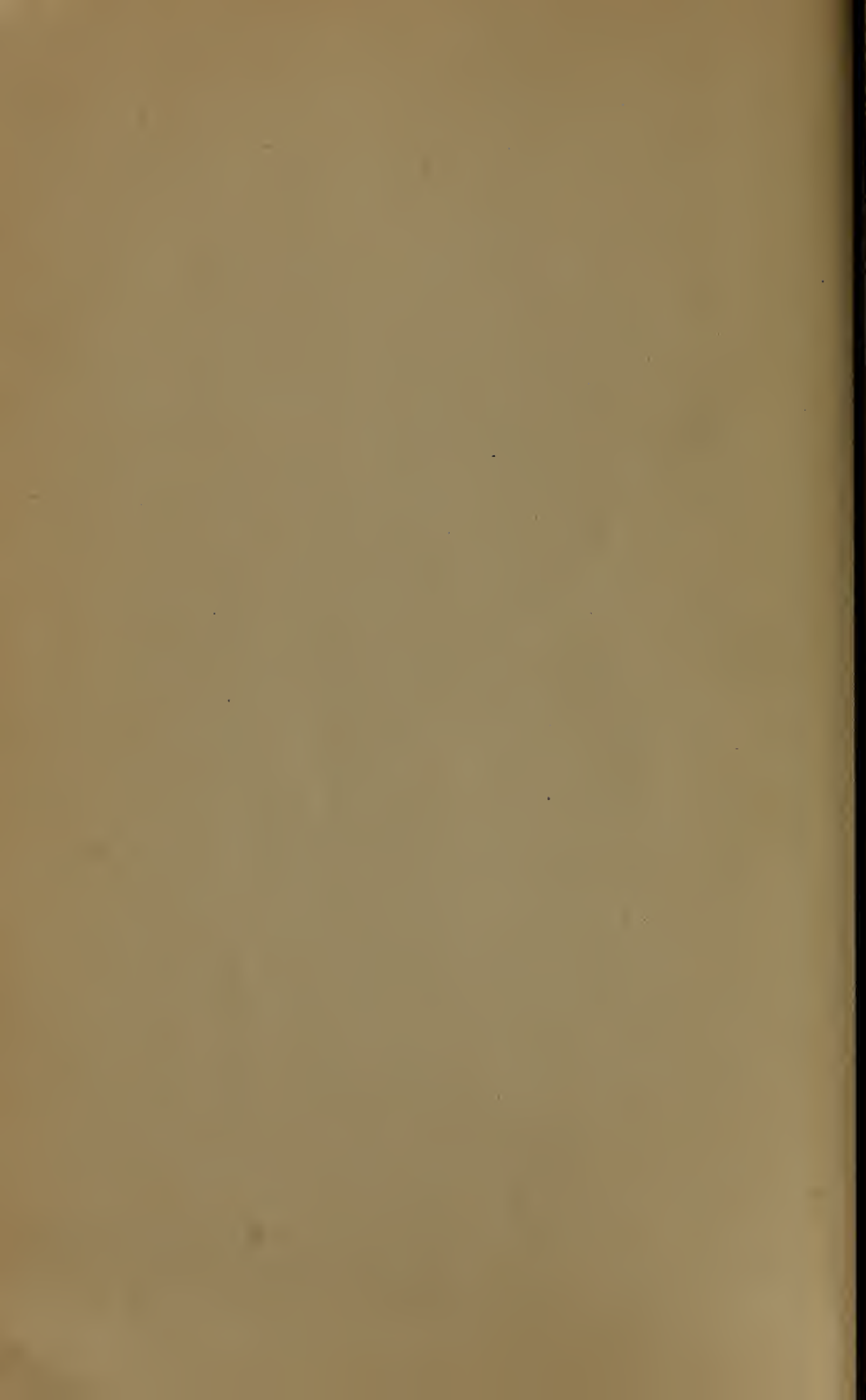
The national constitution was formed September 17, 1787, and went into force by the ratification of nine states, June 21, 1788. By amendments proposed in 1789, and declared adopted in 1791, it was, among other things, provided that "no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law;" and that "the right of the people to be secure in their persons, houses, papers and effects, against UNREASONABLE searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized;" also that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger." Amendments 3, 4, 5.

These amendments show, in unmistakable terms, what the people of that day thought the power of the government would be without such restraints; and how great its authority still is, in time of war or PUBLIC DANGER.

IV. THE EXECUTIVE POWER OF THE AMERICAN STATES.

There is a general conformity of the State Constitutions to the National model. Let us take that of Pennsylvania, as a convenient example.

It prohibits unreasonable searches and seizures, and declares that the military shall be in all cases, and at all times, in strict subordination to the civil power.



It vests the Supreme Executive Power in the Governor, and commands him TO TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED.

He is made commander-in-chief of the army and navy of the commonwealth, and of the militia, except when in the actual service of the United States.

He has power to remit fines and forfeitures, and upon a specified recommendation, to grant reprieves, commutations and pardons, except in cases of impeachment.

He is required, from time to time, to give to the general assembly information of the state of the commonwealth, and to recommend to their consideration such measures as he shall deem expedient.

He may be impeached and removed from office for any misdemeanor therein. [Con. Penn., Art. I, IV, VI, XIV.]

The enrolled militia of the state are subject to duty, not only in case of war or invasion, but also for the suppression of riots, and to aid civil authorities in THE EXECUTION OF THE LAWS. [Penn. Statutes, 1252. Title National Guard, Sec. 16.]

The Executive Power is elsewhere similarly vested. For example, in New York it is vested in the Governor, who is commander-in-chief, and is required to take care that the laws are faithfully executed. In Massachusetts the Governor is the supreme executive magistrate, and is commander-in-chief of the military forces of the state; and in Virginia the chief executive power is vested in the governor, who is the like commander, and bound to take care of the execution of the laws. In the other states substantially similar provisions exist.

V. THE EXECUTIVE POWER IN AMERICAN CITIES.

To illustrate this department of executive authority, let us take an example from the heart of the union, where is to be held the next great exposition of the progress of the world, that we may see what means exist for the protection of the people who will visit Chicago on that occasion. The organic law of cities in the state of Illinois, under which Chicago is governed, provides that the chief executive officer of a city shall be a Mayor; that he may remove any officer appointed by him, subject to restoration if the city council shall disapprove of the removal; that the mayor may exercise, within the city limits, the powers

conferred upon sheriffs to suppress disorder and keep the peace; that he may release any person imprisoned for violation of a city ordinance; that he shall, from time to time, give the city council, which consists of a board of aldermen, information relative to the affairs of the city, and shall recommend for their consideration such measures as he may deem expedient; THAT HE SHALL TAKE CARE THAT THE LAWS AND ORDINANCES BE FAITHFULLY EXECUTED; THAT HE SHALL HAVE POWER, WHEN NECESSARY, TO CALL ON EVERY MALE INHABITANT OF THE CITY, OVER THE AGE OF EIGHTEEN YEARS, TO AID IN ENFORCING THE LAWS AND ORDINANCES, AND TO CALL OUT THE MILITIA TO AID IN SUPPRESSING RIOTS AND OTHER DISORDERLY CONDUCT, OR CARRYING INTO EFFECT ANY LAW OR ORDINANCE, SUBJECT TO THE AUTHORITY OF THE GOVERNOR AS COMMANDER-IN-CHIEF OF THE MILITIA.

For any palpable omission of duty; or any wilful and corrupt oppression, misconduct or malfeasance in the discharge of the duties of his office, the Mayor may be indicted, fined not exceeding one thousand dollars, and removed from office. Cities Act, Art. 2, Sec. 1, 7, 8, 9, 10, 12, 13, 14.

THE RIGHT AND DUTY OF ARREST

are thus set forth in the criminal code of this state:

"It shall be the duty of every sheriff, coroner, marshal, policeman, or other officer of any incorporated city, town, or village having the power of a sheriff or constable, when any criminal offense or breach of the peace is committed or attempted in his presence, forthwith to apprehend the offender and bring him before some justice of the peace, to be dealt with according to law; to suppress all riots and unlawful assemblies and to keep the peace, and without delay to serve and execute all warrants, writs, precepts, and other process to him lawfully directed. Sec. 340.

"An arrest may be made by an officer or by a private person without warrant for a criminal offense committed or attempted in his presence, and by an officer when a criminal offense has in fact been committed and he has reasonable ground for believing that the person to be arrested has committed it." Sec. 342.

Other provisions of a similar character might be cited.

For other cities of the New World similar provisions have been made to secure the due enforcement of the laws, and the preservation of the peace. For example, in the state of New York, a mayor or sheriff may call out the militia in case of riot,

tumult, breach of the peace, resistance to process, or imminent danger thereof. [R. S. Sec. 77, 79.]

In Virginia, a mayor or sheriff may call for troops in case of a breach of the peace, tumult, riot, or resistance of law, or imminent danger of the same. [R. S. Sec. 368, 869.]

In the Dominion of Canada, the militia may be called out in aid of the civil power, in any case in which a riot, disturbance of the peace, or other emergency requiring such service occurs, or in the opinion of the peace officers is anticipated, as likely to occur. [Laws of Can. 621.]

In the Provinces, taking Ontario as an example, the mayor is the chief executive of cities and towns, and it is his duty to be vigilant and active at all times, in causing the laws for the government of the municipality to be duly executed and put in force. [R. S. O. p. 1832.]

VI. THE POWERS AND DUTIES OF SHERIFFS.

In England, the sheriff is the chief officer of the king in the county, and anciently the office of sheriff was one of great dignity and power. He succeeded the earl, as commander of the county. The sheriff is the keeper or governor of the county. As the keeper of the peace, both by common law, and by special commission, the sheriff is the first man of the county, and superior, during his term of office, to any nobleman therein.

He may apprehend and commit to prison all persons who break the peace, or attempt to break it. He may, and is bound, *ex officio*, to pursue and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody.

The sheriff is also to defend his county against the king's enemies when they come into the land, and also against any rebellion, insurrection or riotous assembly of the people. And for this purpose, as well as for keeping the peace, and pursuing felons, he may command all the people of his county to attend him, which is called the *posse comitatus*, or power of the county.

If any resist the sheriff in the performance of his duty, he may arrest and imprison them; and he may commit any one for an affront, or breach of the peace, committed in his presence. [Backus on Sheriffs, 1-8, citing Dalton on Sheriffs, 5, 26, 355 and Blackstone's Commentaries I, 343-4.]

In America, the common law generally prevails, modified to suit the changed conditions of the people.

A recent standard American work on Sheriffs, says: The chief executive functionary of the county is the sheriff. He is endowed with substantially the same powers, and is subject to the same liabilities as were his predecessors in England, in the time of Alfred the Great. The lapse of a thousand years has made no substantial change in the nature of his office. Murfree on Sheriffs, Sec. 1.

The sheriff is the principal conservator of the peace, for his county, and from that function is derived his power of making arrests for breaches of the peace, OR TO PREVENT THE COMMISSION OF OFFENCES.

* * * * *

He is required, in his capacity of conservator of the peace, to suppress riots, mobs and insurrections; and in the discharge of his duty to employ the whole power of the county, including any military force that may be necessary and available for that purpose. Murfree, Sec. 1160.

It is the duty of the person who has made an arrest, to take the offender, as soon as convenient, before some magistrate, for such further proceedings as law and justice may require. *Ibid.* Sec. 1167.

Says another authority: It is the duty of sheriffs, as conservators of the peace, as well as of all constables, coroners, marshals, and other peace officers, to PREVENT every breach of the peace, and to SUPPRESS every unlawful assembly, affray, or riot which may happen in their presence. If there be an affray in a dwelling house, the officer may even break its door, to preserve the peace. Crocker on Sheriffs, 33.

The United States Marshal is the officer of the National government who corresponds to the sheriff under the governments of the several states. The marshal's duties and liabilities are substantially those of a sheriff. The marshals are conservators of the peace of the United States in their respective districts. Murfree on Sheriffs, Sec. 10.

The Illinois constitution requires the election of a sheriff in every county, and the statute of sheriffs provides that each sheriff shall be conservator of the peace in his county, and shall keep the same, suppress riots, routs, affrays, fighting, breaches of the peace, and PREVENT CRIME; and may arrest offenders on view, and cause them to be brought before proper magistrates for trial or examination; and that, TO KEEP THE PEACE AND PRE-

VENT CRIME, or execute any writ, process, warrant, order or decree, HE MAY CALL TO HIS AID, WHEN NECESSARY, ANY PERSON, OR THE POWER OF THE COUNTY. Sheriffs Act, Sec. 17, 18.

Similar acts, declaratory of the common-law powers and duties of sheriffs, may be found in the statute books of other states and countries. A new statute does not necessarily import a new law, but is often enacted to affirm and modify, or extend some rule of the common law, venerable with age, and crowned with the honors of centuries of human service.

The sheriff is the connecting link between the executive and the judicial departments of the government, and acts in a dual capacity. As deputy governor he acts in subordination to the chief executive, while as the agency by which judicial proceedings are enforced, he is subject to the orders of the courts of justice.

VII. THE NATURE OF THE EXECUTIVE POWER.

The nature of the executive power may now be considered. The great American Chancellor, James Kent, in his *Commentaries on American Law*, published in 1826, discussing the executive department of the government, among other things, says:

“The object of this department is THE EXECUTION OF THE LAW; and good policy dictates that it should be organized in the mode best calculated to attain that end with precision and fidelity.” Vol. I, Lect. XIII, p. 271.

“When laws are duly made and promulgated, they only remain to be executed. No discretion [on that point] is submitted to the executive officer. It is not for him to deliberate and decide upon the wisdom or expediency of the law. What has been once declared to be law, under all the cautious forms of deliberation prescribed by the constitution, ought to receive prompt obedience.” Id., 271.

“The characteristic qualities required in the executive department are promptitude, decision and force.” Id. 272.

“*The command and application of the public force to execute law, maintain peace, and resist foreign invasion, * * * * ** have always been exclusively appropriated to the executive department, in every well-organized government upon earth.” Id., 282.

In his learned *Commentaries on the Constitution of the United States*, published in 1833, Joseph Story, one of the most

distinguished judges of the Supreme Court of the United States, and Dane Professor of Law in Harvard University, in discussing the Executive Department of the National Government, says:

“Energy in the executive, is a leading character in the definition of good government.” Sec. 1417. “This energy is essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; and to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy.” Sec. 1417.

“A feeble executive implies a feeble execution of the government. A feeble execution is but another name for a bad execution; and a government ill-executed, whatever may be its theory, must, in practice, be a bad government.” Sec. 1417.

“The ingredients which constitute energy in the executive, are unity, duration, adequate provision for its support, and competent powers. The ingredients which constitute safety in a republican form of government, are a due dependence on the people, and a due responsibility to the people.” Sec. 1418.

“The command and application of the public force, TO EXECUTE THE LAWS, TO MAINTAIN PEACE, and to resist foreign invasion, are powers so obviously of an executive nature, and require the exercise of qualities so peculiarly adapted to this department, that a well organized government can scarcely exist when they are taken away from it.” Sec. 1491.

“From the nature and duties of the executive department, he must possess more extensive sources of information, as well in regard to domestic, as foreign affairs, than can belong to Congress.” Sec. 1561.

“The duty imposed on the executive TO TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED, follows out the strong injunctions of his oath of office, that he will preserve, protect and defend the constitution. The great object of the executive department is to accomplish this purpose, and without it, be the form of government what it may, it will be utterly worthless for offence or defence; for the redress of grievances or the protection of rights; for the happiness, or good order, or safety of the people.” Sec. 1564.

Judge Thomas M. Cooley, distinguished as a member of the Supreme Court of Michigan, and as Professor of Law in the University of Michigan, in his Commentaries on the Constitu-

tional Limitations of the Legislative Power of the States of the American Union, says:

“Such powers as are specially conferred by the constitution upon the governor, or upon any other specified officer, the legislature cannot authorize to be performed by any other officer or authority; and from those duties which the constitution requires of him, he cannot be excused by law.” P. 115.

Such are the powers with which executive officers are invested; such are the objects of the creation and organization of the executive department of government, and such are the safeguards provided here for abuses of the executive power. The disclosure of such powers must surprise those who have been accustomed to think of the American system of government as lacking in authority to maintain supremacy over internal disorders; and, on the other hand, must delight the patriot and the philanthropist who believe that power is vested in the agencies of government for the protection of virtue and the enforcement of justice.

VIII. APPLICATION OF THE FOREGOING PRINCIPLES TO THE STATE OF THE COUNTRY.

Surely no machinery of government could be devised more suitable to maintain law and order, liberty and justice, progress and peace, than that which we have thus briefly reviewed. The chief executive officer of city, county, state and nation is endowed with plenary power to preserve the peace, maintain public order, and prevent riot and crime.

Surely in the presence of this resistless power, every worthy person, class and interest of human society should rest in confidence that any attempted assault will be promptly repelled, and any offence actually committed be adequately punished. Surely in such a presence all forms of evil should be filled with fear, and impelled to flee from impending arrest and penalty.

WHY THE LAWS ARE NOT ENFORCED.

Why is it otherwise? Why is it that dissipation, disorder, vice and crime so often flaunt the banners of their infamy in the faces of law-abiding people, unchecked by the executive voice or hand? Why is it that everywhere a feeling akin to that of insecurity touches, however faintly, the hearts of the people? And if the causes of this unhappy state of the country can be discovered, can any means for their cure and removal also be disclosed, or is the condition we lament inseparable from the time

and circumstances in which we live? These are grave questions. There are few or no others which more deeply concern the present happiness or future welfare of the people, and they therefore deserve the most anxious and pains-taking efforts for their adequate solution.

Let us make the trial. If we should fail, the effort will be honorable; and if, by the help of Providence, we should succeed, the results will be beneficial, beyond comparison.

The first cause of the widely-prevalent neglect of executive duty, may be found in the fact that in this "government of the people, by the people, for the people," there has not, hitherto, been any general study of the executive power, nor any general demand for its efficient exercise. The first remedy to be sought is, therefore, in enlarged knowledge of the executive office and functions, widely disseminated among the people. Verifying the old adage that "knowledge is power," such information would be sure to produce a potent demand for the protections which the executive power was created to give.

The idea that government is an active, ever-present power, keeping constantly informed of the state of the country, and ready at every moment to intervene, *of its own motion*, for the protection of the people, seems scarcely to have entered the public mind.

Those who can spare the needed time and means, seek redress for wrongs, impending or suffered, by appealing to the courts. The humble, whose present burdens are all they can bear, endure a new oppression as best they can. The fact that there are courts of justice to try proper controversies, and adjudge penalties incurred, seems to have had the singular effect of blinding both the people and their public officers to the greater fact that the protection of the people in the enjoyment of life, liberty, and the pursuit of happiness, is the ever-present duty of the executive power, and in all ordinary cases, requires no law-suit, except occasionally a criminal prosecution, following an arrest, for the infliction of a penalty incurred.

The constitution and laws do not say that Sheriff, Marshal, Mayor, Governor and President shall enforce the laws and protect the people, provided that some other department of the government shall request, or some particularly aggrieved citizen shall petition therefor; but the command is imperative that the President shall take care that the laws be faithfully executed;

and the same command is repeated to Governor and Mayor, and extended to Sheriff and Marshal.

Over this high executive power and duty the other departments of the government have no control. They can neither annex conditions on which it shall be exercised, nor relieve the incumbent of executive place from the obligation to perform the peculiar duties of his office.

In the enforcement of the laws, the constitution, alike of state and nation, distinctly intends that the executive shall move in the first instance, and without any special application, as the occasion may require. The constitution presupposes that by means of the facilities at his command, the executive will be at all times more fully informed of the condition of the people; of the dangers that threaten them; the evils that disturb their peace; and their needs of protection and defence, than any other person or public officer within the jurisdiction. It is for this reason that the constitution requires the chief executive to give the legislative body information of the state of the country, which it is not presumed that they would otherwise acquire.

Acting in good faith and within the limits of his jurisdiction, the executive officer is as independent, and as fully protected as the legislator or the judge. All may err, but there is, in such a case, no personal liability for the consequences of the error. Were the rule otherwise, no prudent person would consent to hold an executive office. [Burton vs. Fulton, 49 Penn. State R. 151.]

It is only when an executive chief usurps a power not within his province, or violates a law which he ought to enforce, that his orders will not afford protection to the subordinates to whom they are directed for execution.

It is only when such an officer acts without authority, without probable cause, and with actual malice, that he deserves impeachment and punishment.

Judicial decisions upon the nature, extent and limitations of the executive power and the validity, or excusability of executive acts in the enforcement of the laws and the preservation of the peace, are so few and limited, that for the most part, resort must be had to the fundamental principles of constitutional and common law, for the solution of the problems that arise in this connection.

Thus, actual government is by the executive power, under laws enacted by popular representatives, with judicial safeguards

against oppression, through abuses of power and violations of law. The constitution plainly intends that in very fact the executive shall take care that the laws be faithfully executed; disorder promptly suppressed; crime firmly prevented; the peace effectually preserved, and the people adequately protected. These things can be done only by an executive ever on the alert, and ready for instant action as the emergency may demand; and the executive department of government is created for those express purposes, and is endowed with ample power for every contingency that may arise.

Whether after a suppression of disorder and an enforcement of the laws, judicial prosecutions shall be instituted, is an entirely different matter. The judicial authorities have their own means of proceeding for violations of law; and so far as the executive is concerned, he must judge, when obedience of law has been secured, whether the public welfare requires further proceedings on his part. The vesting of the power of pardon in the chief executive is a plain indication of the nature and extent of the executive discretion in matters relating to violators of law who have submitted to its requirements and acknowledged its supremacy.

But it must ever be borne in mind that there is no discretion to let law-breaking continue; none to let the law be defied. The wrong-doer must make his unconditional surrender to the commander before he is in a position to ask for favorable terms.

PARTISANSHIP.

But another cause of executive inefficiency deserves a passing notice. That cause is the demoralizing influence of political partisanship. It is perfectly obvious that with the power to command the aid of every able-bodied man, including any military force within the jurisdiction, any law of the nation, any law of a state, any law of a city can be enforced by the executive officer whose duty it is to enforce it, in case he really desires such enforcement, and has the courage requisite for his position. With practically unlimited power of law-enforcement, the executive can surely find a way to proceed, if he have the will to do so. The old maxim is true: "Where there is a will, there is also a way!"

The chief reason why there is so much neglect of executive duty in relation to the laws enacted to secure the peace and good

order of society, by closing liquor saloons, theatres, and other secular places on Sunday, is well illustrated by the following true story:

In a city in which there were numerous American theatres, one of them commenced giving plays on Sunday evening in violation of the law. The manager of the leading theatre of the city waited on the Mayor, and the following dialogue took place:

MANAGER: Mr. Mayor, I have called to urge upon you the importance of preventing the opening of the theatres on Sunday. It has just begun here, as you know, and you can stop it, if you will, but if you do not, I must give you warning that all the theatres will open; though none of the prominent managers want it so. We therefore ask you to stop the evil while you can.

MAYOR: Yes, Mr. Manager, I know what you say, but if I should close the American theatres, I should be compelled to close the German theatres also, and that would hurt the party. So I can not do it.

MANAGER: That is just what is the matter, Mr. Mayor. You think more of your party than you do of the public good, and your official duty. Thank God! I have no such politics.

MAYOR: Well, I can't help it. I must stand by the party.

The manager went his way; and soon all the theatres opened on Sunday night, and have continued Sunday performances to this day—for the good of the party!

Such violations of law as this story illustrates are notorious in all parts of the country, and fully warrant the statement that *excessive Political Partisanship is to-day the deadliest living foe of the peace, good order and prosperity of the country.*

It cripples executive administration, and for the sake of their votes permits the dangerous classes to prey upon the people, working incalculable injuries to them, through the dram-shop, the gambling-house, and other fortresses, schools and asylums of disorder and vice. The evils of that partisanship can not possibly be overrated; the necessity for reform can not possibly be exaggerated. But those evils will continue till the people rise and break the chains of partisan bondage, and insist, as a condition precedent of their support, that devotion to the country, and ability to promote the general welfare, and not mere devotion to party, and mere ability to promote its success, shall determine the selection of the persons by whom the great powers of government shall be held and exercised.

However other reforms may be neglected, this grand work of Law Enforcement cannot wait. It must go forward, for a crisis that threatens the integrity of the government has been reached, not merely in one section, but in all parts of the country. The law-breakers must be compelled to submit to the laws; the law-abiding must be put in control of every department of power; and the laws must be made in fact, as they are in theory, supreme. We do not object to political parties, for they are indispensable to free government; but we do object to all partisans who neglect or refuse to enforce the laws "*because it will hurt the party!*" If an individual betray his country, we hold him deserving of death for his treason, and if a partisan or a party violate law and commit injustice to secure success, we should be equally ready to condemn the wrong, and insist that THE LAWS MUST BE OBEYED.

WASHINGTON ON GOVERNMENT BY FACTION.

In the language of Washington, in his Farewell Address to the People of the United States, we declare anew that "*all obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract or awe the deliberation and action of the constituted authorities, are destructive of the fundamental principle of the government. They serve to organize faction, to give it an artificial and extraordinary force; to put in the place of the delegated power of the nation the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the illconcerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans, digested by common councils and modified by mutual interests.*"

Rarely have these wise counsels of the Father of his country been more urgently needed than at the present time. It is right for good citizens to divide on political questions if they will; but it is not right for them to divide on questions of Public Order and Morals; for in comparison with those crown-jewels of the enlightened state, merely political differences of opinion are insignificant. Among the proofs of fitness for self-government, there is none higher than the ability to differ on a mere question of political policy, and to unite on a question of good government and public morals. That one agrees with me in regard to the tariff, is no more a reason why I should support him for

an executive or a judicial office, than why I should recommend him as an expert book-keeper, or surveyor.

WHAT THE EMERGENCY REQUIRES.

The commanding need of our time is for executive officers who understand and will exercise the executive power. The laws do indeed need improvement, and judicial proceedings, reform, but not as urgently as existing laws need better enforcement. In his most exalted character of dignity and power, the supreme executive is called the CHIEF MAGISTRATE. In that character he organizes the administration of his department of the government, under appropriate orders, rules and regulations, and carries into effect with promptitude and efficiency, that great body of the laws which do not require any judicial interpretation or decision, but only executive direction and application. THIS IS GOVERNMENT. The legislative department acts by statute; the judicial by judgment; and the executive by proclamation and order; and each in its province is supreme. The first *enacts*, the second *expounds*, the third *executes*; and the result of that triple supremacy is not chaos, but harmony and power. If the existing laws were now only sufficiently enforced, most of the evils against which new legislation is demanded, would largely disappear.

The mighty hand of executive power was created to protect and defend the people and their institutions against the assaults of foes within, as well as against the attacks of enemies without. Let it no longer neglect its duty. On the same table where waits the pen of the Chief Magistrate, rests also the sword of the Commander-in-Chief. If evil doers heed not the executive order and proclamation, the Constitution intends that they shall feel the sharper argument of arms. The Constitution knows nothing of crime and disorder, defiant and unsubdued. It places at the disposal of the Commander-in-Chief all the civil and military forces of the government, and requires him to Execute the Laws, and maintain peace. There are no conditions; there is no alternative. THE LAWS MUST BE OBEYED.

THE MODE in which the laws shall be enforced is not prescribed. That is wisely left to the good judgment and discretion of the executive, and may vary according to the exigencies of the particular occasion. The constitution grants power, and demands a result; and he who cannot give the result has no real right to hold the power. Executive office is no place for timidity and indecision. Alike in monarchy and in republic,

but more especially in the latter, the safety and peace of the people depend on the integrity, the wisdom, the strength and the activity of the executive power. In the suppression of riot and disorder, and the prevention of crime, it may be necessary to destroy property, and even to take human life; and the people have made their chief magistrate the judge of that necessity, and have given him authority to execute the laws, "peaceably if he can, forcibly if he must." It is a serious thing to destroy property; it is a dreadful thing to take human life; and the just executive will make the utmost effort, by warning, appeal, and command, to secure the supremacy of the laws without injury to either; but if riot and crime will not heed his warning, appeal and command, he must meet the emergency according to his oath of office, and those who wilfully resist the law must fall.

To take care that the laws be faithfully executed, is diligently to observe and inquire whether they are obeyed; and in case any violation of law appears or is discovered, to admonish the offenders to cease their disobedience; and if the offence be serious, to cause the arrest and detention of the law breakers for punishment in due course of law; and if in other cases the preliminary warning is not promptly followed by compliance, to apply, without needless delay, such force as may be necessary to secure obedience of the laws; and in case the wrong committed can be undone, to compel its prompt undoing; and if a repetition of the offence be attempted or threatened, to interpose the necessary means of prevention. To preserve the peace, to maintain order, to protect the people—these are the purposes for which the laws should be faithfully executed.

It is an impressive truth that just in proportion as the executive authority is alert, active and determined, will its moral power be found adequate, without a resort to physical force. There will be little resistance to law, when it is known that the law is equally able and ready to protect the faithful, and to punish the refractory.

The principle of executive authority is essentially the same in family, school and state. Insubordination is fatal to peace, to prosperity, to happiness.

The claim that because a considerable number of persons in a particular locality, are opposed to a particular law, it can not, or should not be enforced, is too imbecile for serious discussion. If the laws are defective, amend them; if oppressive, repeal

them, but while they stand, enforce them. Only this, is rational government.

It is, therefore, a high and imperative duty to exalt the regal principle of human government in the affections of the people; to lead them to revere and study its majestic nature and lofty duties; and to encourage them to support with all their power those executive officers upon whose courage and fidelity they must ever depend for protection and defence. However perfect may be the laws, and the judicial decisions that expound them, the people cannot enjoy the blessings of a reign of Law and Order, without a faithful and efficient exercise of THE EXECUTIVE POWER.

The American Republic is not the absence of government. It aims to be the very perfection of government. In the name and by the authority of THE PEOPLE, it exercises sovereignty, enacts and enforces law, maintains its independence among the nations of the earth, makes war, and establishes peace.

Thus august, supreme and irresistible is the regal principle in free government, and upon its vigor, activity and wisdom, depends the actual enjoyment of the rights and liberties of the of the people.

LIBRARY OF CONGRESS



0 018 653 024 A



LIBRARY OF CONGRESS



0 018 653 024 A